46 Jurisprud. Can. 1875

THE QUEBEC CONTROVERTED ELECTIONS ACT 1875.

GENERAL RULES

MADE BY

HER MAJESTY'S SUPERIOR COURT

FOR THE

PROVINCE OF QUEBEC.

Under and by virtue of the Statute of the Province of Quebec entitled "The Quebec Controverted Elections Act, 1875.

QUEBEC
"LE CANADIEN" STEAM PRINTING.
1875

IN THE SUPERIOR COURT.

GENERAL RULES

FOR THE TRIAL OF

CONTROVERTED ELECTIONS

OF MEMBERS OF THE

LEGISLATIVE ASSEMBLY OF THE PROVINCE OF QUEBEC,

Made under and by virtue of the Statute of the Province of Quebec passed 23rd Feby, A. D. 1875, being the "QUEBEC CONTROVERTED ELECTIONS ACT, 1875."

I

An Election Petition shall contain the following statements :—

1. It shall state the right of the Petitioner to petition within section 19 of the Act.

2. It shall state the holding and result of the Election, and shall briefly state the facts and grounds relied on to sustain the prayer.

II

The Petition shall be divided into paragraphs, each of which, as nearly as may be, shall be confined to a distinct portion of the subject, and every paragraph shall be numbered consecutively, and no costs shall be allowed of drawing or copying any Petition not substantially in compliance with this Rule, unless otherwise ordered by the Court or Judge.

III

The Petition shall conclude with a prayer, as for instance, that some specified person should be declared duly returned or elected, or that the Election should be declared void, or that a return may be enforced (as the case may be,) and shall be signed by all the Petitioners.

IV

The following form, or one to the like effect, shall be sufficient:

IN THE SUPERIOR COURT.

THE QUEBEC CONTROVERTED ELECTIONS ACT, 1875.

Election of a Member for the Legislative Assembly for *(state the place)* holden on the day of A. D.

Dominion of Canada
Province of Quebec
To wit :

The Petition of A of *or* of A of and of B of , *(as the case may be,)* whose names are subscribed.

1. Your Petitioners *(state right to petition according to Section 19 of the Act.)*

2. And your Petitioners state that the Election was holden on the day of A. D. when AB, CD

and EF were Candidates, and the Returning Officer has returned AB as being duly elected.

3. And your Petitioners say that (*here state the facts and grounds on which the Petitioners rely.*)

Wherefore your Petitioners pray that it may be determined that the said AB was not duly elected or returned, and that the Election was void (*or* that the said EF was duly elected and ought to have been returned,) or, *as the case may be.*

Signed, A.
B.

V.

Evidence need not be stated in the Petition, but the Court or a Judge may order such particulars as may be necessary to prevent surprise and unnecessary expense, and to ensure a fair and effectual trial, and upon such terms as to costs and otherwise as may be ordered.

VI

When a Petitioner claims the seat for an unsuccessful candidate, alleging that he had a majority of lawful votes, the party complaining of and the party defending the Election or return, shall each, six days before the day appointed for trial, deliver to the Prothonotary of the Court and also at the respective domiciles of the Petitioner and Respondent or Respondents, (*as the case may be*) a list of the votes intended to be objected to, and of the heads of objection to each such vote, and the Prothonotary of the Court shall allow inspection and office copies of such lists to all parties concerned ; and no evidence shall be given against the validity of any vote, nor upon any head of objection not specified in the list, except by leave of the Court

or a Judge, upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs, or otherwise, as may be ordered.

VII

When the Respondent in a Petition under the Act, complaining of an undue return, and claiming the seat for some person, intends to give evidence to prove that the Election of such person was undue, such Respondent shall, six days before the day appointed for trial, deliver to the Prothonotary of the Court and also at the domicile of the Petitioner, a list of the objections to the Election upon which he intends to rely. And the Prothonotary of the Court shall allow inspection and office copies of such list to all parties concerned ; and no evidence shall be given by a Respondent of any objection to the Election not specified in the list, except by leave of the Court or a Judge and upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs as may be ordered, and the Judge may order like particulars as in the case of the Petitioner.

VIII.

With the Election Petition there shall be fyled in writing an election of domicile by the Petitioner or by his Attorney, if he has one, at some place within a mile of the office of the Prothonotary where the said Petition shall be deposited. In default of his doing so, the office of the said Prothonotary shall be deemed to be the domicile of the said Petitioner for all the purposes of his said Petition.

If the Petitioner appear by Attorney the latter shall, at the same time, fyle a written appearance.

IX.

The Respondent shall, within five days from the service o the Petition, fyle at the Office of the Prothonotary a written appearance signed by him or his Attorney, and a written election of domicile shall be made and fyled by the said Respondent or his Attorney, in the same manner as required of the Petitioner, by the last preceding rule : and in default of his so doing the office of the said Prothonotary shall be deemed to be his domicile for all the purposes of the Petition.

X.

The Petitioner or Respondent may, at any time after the delay above mentioned, on leave previously obtained from the Court or the Judge, appear by Attorney who shall forthwith fyle an appearance and an election of domicile at the Prothonotary's Office, where afterwards service of documents may be legally effected.

XI.

The Prothonotary shall keep a book or books at his office in which he shall enter all the elections of domicile made and fyled at his office under the present rules, which books shall be open to inspection by any person during office hours.

XII.

In case of evasion of service, the affixing in a conspicuous place in the office of the Prothonotary of the Court, a notice of the Petition having been presented, stating the Petitioner, the prayer, and the fact that money has been paid into Court as security under the Act, shall be deemed equivalent to personal service, if so ordered by a Judge.

XIII.

At any time after an Election Petition is fyled, either party by order of the Court or a Judge, may have production and inspection of all books, lists, commissions, ballots, certificates, statements, papers, documents and returns whatsoever, relating to the Election, returned to, or in possession of the Clerk of the Crown in Chancery, at such place and in such manner, and upon such terms as the Court or Judge shall direct. And for the purpose of such production and inspection, and for the purposes of the trial of the Election Petition, the Clerk of the Crown in Chancery shall deliver or transmit as and when directed by Rule of Court or Judge's order, the said books, lists, commissions, ballots, certificates, statements, documents, papers and returns in such manner and to such officer as by Rule of Court or Judge's order shall be directed.

The said books, lists, commissions, ballots, certificates, statements, documents, papers and returns to be returned to the custody of the Clerk of the Crown in Chancery after the trial of the Petition, or after the purpose has been served for which their delivery or transmission was required.

XIV.

In the event of the Judge not having arrived at the time appointed for the trial, or to which the trial is postponed, the commencement of the trial shall, *ipso facto*, stand adjourned to the ensuing day, and so from day to day, until the arrival of the Judge.

XV.

No formal adjournment of the Court for the trial of an Election Petition shall be necessary, but the trial is to be deemed

adjourned, and may be continued from day to day, until the enquiry is concluded, and in the event of the Judge who begins the trial being disabled by illness or otherwise, it may be concluded by any other of the Judges.

XVI.

All affidavits and papers in any Election matter in Court, or in any Court for the trial of a Petition may be entitled as follows:

IN THE SUPERIOR COURT.

THE QUEBEC CONTROVERTED ELECTIONS ACT, 1875.

Election of a member for the Legislative Assembly for (*name the Electoral Division.*)

Dominion of Canada.
Province of Quebec.
To wit :

XVII.

The order of a Judge to compel the attendance of a person as a witness may be in the following terms :

Court for the trial of an Election Petition for (*complete the title of the Court*), the day of

To A. B. (*describe the person*). You are hereby required to attend before the above Court at (*place*) on the day of , at the hour of (*or* forthwith *as the case may be*), to be examined as a witness in the matter of the said Petition, and to attend the said Court until your examination shall have been completed.

As witness my hand,

A. B.,
Judge of the said Court.

XVIII.

In order to the commitment of any person for contempt, the warrant may be as follows :

At a Court holden on at for the trial of an Election Petition for the (*here name the Electoral Division*) before the Honourable and one of the Judges, pursuant to the "Quebec Controverted Elections Act, 1875."

Whereas A. B. has this day been guilty, and is by the said Court adjudged to be guilty, of a contempt thereof ;—The said Court does therefore sentence the said A. B. for his said contempt to be imprisoned in the Gaol for , and to pay to Our Lady the Queen a fine of $, and to be further imprisoned in the said Gaol until the said fine be paid. And the Court further orders that the Sheriff of the said District (*or as the case may be*), and all constables and officers of the Peace of any District or place where the said A. B. may be found, shall take the said A. B. into custody, and convey him to the said Gaol, and there deliver him into custody of the Gaoler thereof to undergo his said sentence. And the Court further orders the said Gaoler to receive A. B. into his custody, and that he shall be detained in the said Gaol in pursuance of the said sentence.

Signed the day of A. D.

(*To be signed by the Judge.*)

XIX.

Such warrant may be made out and directed to the Sheriff or other person having the execution of process of the Superior Courts as the case may be, and to all Constables and Officers of the Peace of the District or place where the person adjudged guilty of contempt may be found ; and such warrant shall be

sufficient without further particularity, and shall and may be executed by the persons to whom it is directed or any or either of them.

XX.

Notice of an application for leave to withdraw a Petition shall be in writing and signed by the Petitioners or their Attorney specially authorized thereto. It shall state the ground on which the application is intended to be supported.

The following form shall be sufficient:

IN THE SUPERIOR COURT.

THE QUEBEC CONTROVERTED ELECTIONS ACT, 1875.

(*Name the Electoral Division*) Petition of (*state Petitioner*) presented day of . The Petitioner proposes to apply to withdraw his Petition upon the following ground (*here state the ground*), on (*state the day.*)

Dated this day of

(Signed)

XXI

Notice of the intention of a Petitioner to discontinue his Petition, shall be given, by causing a copy of the notice of the application in that behalf, to be affixed ten days before the day on which such application is to be made, on the door of the office of the Prothonotary or Clerk of the Court where the proceedings are then being had ; and by affixing ten days before the day on which such application is to be made, a copy of such notice of application, on the door of the Registry office, or of each Registry Office if there be more than one, in such Electoral Division ; and if there be no such Registry Office

then by affixing, within the time aforesaid, a copy of such notice of application, on the door of the office of the Municipal Secretary-Treasurer having his office in the said Electoral Division, nearest to the place where the Election was held ; and if there be no such Registry Office or office of a Municipal Secretary-Treasurer within such Electoral Division, then by affixing copies of such notice of application on any two other public places within the said Electoral Division, and by causing the said notice of application to be published twice in a newspaper in the English language, and twice in a newspaper in the French language, published or circulating in the said Electoral Division, if such there be, and such notice of application shall also be published in the Quebec Official Gazette.

The following may be a form of such notice :

IN THE SUPERIOR COURT.

THE QUEBEC CONTROVERTED ELECTIONS ACT, 1875.

In the Election Petition for in which is Petitioner, and Respondent.

Notice is hereby given that the above Petitioner has on the day of lodged at the office of the Prothonotary of the Court, notice of an application to withdraw the Petition, of which notice the following is a copy (set it out), and take notice that any person who might have been a Petitioner in respect of the said Election may apply for leave to be substituted as a Petitioner.

(Signed)

XXII

Notice of abatement of a Petition by death of the Petitioner or surviving Petitioner, under Section 107, of the said Act,

shall be given by the party or person interested, in the same manner as notice of an application to withdraw a Petition ; and the time within which application may be made to the Court or Judge by motion or summons of a Judge to be substituted as a Petitioner, shall be one calendar month, or such further time as upon consideration of any special circumstances, the Court or Judge may allow.

XXIII

The manner and time of the Respondent giving notice to the Court that he does not intend to oppose the Petition, shall be by leaving notice thereof in writing at the office of the Prothonotary of the Court, signed by the Respondent, six days before the day appointed for trial, exclusive of the day of leaving such notice and shall by him be served on the Petitioner.

XXIV

The time for applying to be admitted as a Respondent in any of the events mentioned in the 110th Section of the Act shall be within ten days after such notice is given as hereinbefore directed, or such further time as the Court or a Judge may allow.

XXV

Six days before the time appointed for the trial of any Election Petition, the Petitioner shall leave with the Prothonotary of the Court, for the use of the Judge at the trial, fairly written on one side of the paper only, a copy of the Petition and of all the procedings thereon, which show the several matters to be tried—including the particulars of objections on

either side ; the correctness of which copy, in so far as the proceedings are fyled with the Prothonotary, shall be certified by the said Prothonotary. The Judge may allow amendment of the said copy, or in default of such copy being delivered, the Judge may refuse to try the Petition or may allow a further time for delivery of the copy, or may adjourn the trial—in every case upon such terms, as to costs and otherwise, as the Judge shall see fit to impose.

XXVI

After the trial of an Election Petition shall have been concluded and the same shall be inscribed for final hearing on the merits before the Court of Review in the manner prescribed by law, the Petitioner and the Respondent respectively shall, at least five days before the day fixed for such hearing, print and fyle with the Prothonotary of the Superior Court where the said Petition is to be heard on its merits twenty cases containing a statement of the grounds and reasons submitted to the Court for the maintenance and rejection respectively of the said Petition—and such statements shall be divided into distinct items or articles, each of which shall be regularly numbered in succession and shall in a summary manner explicitly set out and state each particular ground or reason as aforesaid with the point of law or fact upon which such ground or reason shall rest. No party shall be heard upon any ground or reason other than those so set out in his said cases, except by leave of the Court. The Petitioner and the Respondent respectively shall print *in extenso* the evidence by them respectively adduced, as a part of their case, or such part thereof as, by consent in writing of all parties, shall be declared the only evidence material to be considered by the Court of Review, but where the parties have been put to the expense of a Stenographer

then it shall not be necessary to have the evidence printed. And if the cases of the Petitioner be not so delivered and fyled within the time prescribed or within such further time as the Court of Review or a Judge may allow for fyling the same, the Petition shall be deemed to be deserted and, on motion of the Respondent, shall be dismissed with costs. And if the cases of the Respondent be not so likewise delivered and fyled as aforesaid, such Respondent may be declared to have deserted his defence, or such other order in the premises may be rendered as the Court may deem just and expedient, and the petition may be heard *ex parte* on the part of the Petitioner and judgment rendered therein without the intervention of the Respondent.

XXVII

Of the cases so fyled the Prothonotary shall forthwith give one copy to each of the Judges sitting in Review and one copy to the adverse party, provided that neither party shall be entitled to such copy until after he shall himself have fyled his own cases, and that such cases shall not be communicated by the Prothonotary to anybody until after both parties have so fyled their cases.

XXVIII.

The days set aside for Review generally shall not be deemed days whereon any Election Petition can be heard on its merits, but it shall be the duty of the Court so sitting in Review, if required by either party, to appoint as early a day as possible for the hearing of such Election Petition.

XXIX.

The Judges residing in the Districts of Montreal, Ottawa, Terrebonne, Joliette, Richelieu, Saint-Francis, Bedford, Saint-

Hyacinthe, Iberville and Beauharnois, shall, as far as circumstances will admit, act in rotation as members of the Court of Review at Montreal, in the causes to be heard under the Act. And as soon as a day for the hearing of a case shall have been fixed, it shall be the duty of the Judge usually presiding in the said Court of Review to cause notice to be given to the Judges required to attend, and provision shall be made by the other Judges for the performance of the ordinary duties of any Judge engaged in holding the Court of Review in accordance with the provisions of the said Act, and if any Judge be prevented by sickness or other sufficient cause from sitting in any cause in Review, he shall, unless it be otherwise arranged, be replaced by the Judge next on duty on the rota, and the Judge so replaced, shall take his turn of duty in the said Court of Review as soon afterwards as possible.

The Judges residing in the Districts of Quebec, Three-Rivers, Saguenay, Chicoutimi, Gaspé, Rimouski, Kamouraska, Montmagny, Beauce and Arthabaska, shall, as far as circumstances will admit, act in rotation as members of the Court of Review at Quebec, in the causes to be heard under the Act, and as soon as a day for the hearing of a case shall have been fixed, it shall be the duty of the Judge usually presiding in the said Court of Review, to cause notice to be given to the Judges required to attend, and provision shall be made by the other Judges for the performance of the ordinary duties of any Judge engaged in holding the Court of Review in accordance with the provisions of the said Act, and if any Judge be prevented by sickness or other such cause, from sitting in any cause in review, he shall, unless it be otherwise arranged, be replaced by the Judge next on duty on the rota, and, the Judge so replaced, shall take his turn of duty in the said Court of Review as soon afterwards as possible.

XXX

No proceedings under " The Quebec Controverted Elections Act, 1875," shall be defeated by any formal objection.

XXXI

Any Rule made or to be made in pursuance of the Act shall be published by a copy thereof being put up in the Office of any Prothonotary of the said Superior Court.

(Signed.)

W. C. MEREDITH, Chief Justice.
A. LAFONTAINE, J. S. C.
A. POLETTE, J. S. C
A. STUART, J. S. C.
J. A. BERTHELOT, J. S. C.
T. J. J. LORANGER, J. S. C.
L. V. SICOTTE, J. S. C.
J. G. JOHNSON, J. S. C.
JOS. N. BOSSÉ, J. S. C.
J. MAGUIRE, J. S. C.
R. MACKAY, J. S. C.
J. W. TORRANCE, J. C. S.
N. CASAULT, J. S. C.
CHRIST^N. DUNKIN, J. S. C.
U. J. TESSIER, J. S. C.
A. B. ROUTHIER, J. S. C., Save as to rule XXIX.
L. J. OLIVIER, J. S. C.
M. DOHERTY, J. S. C.
H. W. CHAGNON, J. S. C.
L. BELANGER, J. S. C.
M. A. PLAMONDON, J. S. C.
L. B. CARON, J. S. C.

Published by a copy being put up in the Office of the Prothonotary of the Superior Court for the District of Quebec at Quebec, this nineteenth day of August 1875.

FISET, BURROUGHS & CAMPBELL,
P. S. C.